

403.270 Custodial issues -- Best interests of child shall determine -- Joint custody permitted -- De facto custodian.

- (1)
 - (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
 - (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
 - (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
 - (b) The wishes of the child as to his custodian;
 - (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
 - (d) The child's adjustment to his home, school, and community;
 - (e) The mental and physical health of all individuals involved;
 - (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
 - (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (h) The intent of the parent or parents in placing the child with a de facto custodian; and
 - (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

- (3) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- (4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (5) The court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.
- (6) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 133, sec. 42, effective July 13, 2004. -- Amended 2000 Ky. Acts ch. 14, sec. 51, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 250, sec. 1, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 169, sec. 2, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 158, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 86, sec. 1, effective June 17, 1978; and ch. 369, sec. 1, effective June 17, 1978. -- Created 1972 Ky. Acts ch. 182, sec. 17.